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October 4, 2013

Via ECF

Hon. Robert M. Levy
United States District Court
225 Cadman Plaza East
Brooklyn, NY 11201

Re: Silverman v. Pacifica Foundation
11 Civ. 1894 (FB)(RML)
Motion to Strike Answer and Counterclaims

Dear Magistrate Levy:

As you are aware, we represent plaintiff in its original claim against defendant.

We write to move for sanctions which go beyond that suggested by counsel for plaintiff on the Counterclaims.

This case was filed in April 2011. The proceedings have repeatedly been delayed by defendant. Throughout this litigation we have repeatedly complained about a failure to participate meaningfully in the discovery process. The most recent failure is only one instance of many.

Counsel on the Counterclaims suggests daily sanctions, meaning some sort of daily fine. We do not agree that after a week of monetary fines, plaintiff then needs permission to litigate a motion to dismiss the Answer and Counterclaims.

We move, based on the repeated refusal of Pacifica to meaningfully participate in the discovery process, that the Court:

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- a. Strike the Answer and Counterclaims; and
- b. Schedule an inquest to determine the exact sum to be entered as a judgment against Pacifica.

Clearly, doing otherwise will result in another long delay. Counsel for Pacifica will move to withdraw (a motion we would oppose), and, if granted, there would be another long delay while new counsel was secured.

It is time to put this litigation to rest.

Respectfully submitted,



Arthur Z. Schwartz

AZS:dr

cc: Scott E. Kossove, Esq.
Patrick J. Hackett, Esq.
Daniel Silverman, Esq.